

1-1 By: Harris S.B. No. 885
1-2 (In the Senate - Filed February 17, 2009; March 9, 2009,
1-3 read first time and referred to Committee on Economic Development;
1-4 April 29, 2009, reported favorably by the following vote: Yeas 5,
1-5 Nays 0; April 29, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to a franchise tax credit for certain research and
1-9 development activities.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Chapter 171, Tax Code, is amended by adding
1-12 Subchapter O-1 to read as follows:

1-13 SUBCHAPTER O-1. TAX CREDIT FOR CERTAIN RESEARCH AND DEVELOPMENT
1-14 ACTIVITIES

1-15 Sec. 171.741. DEFINITIONS. In this subchapter:

1-16 (1) "Base amount," "basic research payment," and
1-17 "qualified research expense" have the meanings assigned those terms
1-18 by Section 41, Internal Revenue Code, except that all of those
1-19 payments and expenses must be for research conducted within this
1-20 state.

1-21 (2) "Strategic investment area" means an area that is
1-22 determined by the comptroller under Section 171.746 that is:

1-23 (A) a county within this state with above state
1-24 average unemployment and below state average per capita income;

1-25 (B) an area within this state that is a federally
1-26 designated urban enterprise community or an urban enhanced
1-27 enterprise community; or

1-28 (C) a defense economic readjustment zone
1-29 designated under Chapter 2310, Government Code.

1-30 Sec. 171.742. ELIGIBILITY. (a) A taxable entity is
1-31 eligible for a credit against the tax imposed under this chapter in
1-32 the amount and under the conditions and limitations provided by
1-33 this subchapter.

1-34 (b) A taxable entity may claim a credit under Section
1-35 171.743(d) or take a carryforward credit without regard to whether
1-36 the strategic investment area in which the entity incurred
1-37 qualified research expenses or made basic research payments
1-38 subsequently loses its designation as a strategic investment area.

1-39 Sec. 171.743. CALCULATION OF CREDIT. (a) The credit for
1-40 any report equals five percent of the sum of:

1-41 (1) the excess of qualified research expenses incurred
1-42 in this state during the period on which the tax is based over the
1-43 base amount for this state; and

1-44 (2) the basic research payments determined under
1-45 Section 41(e)(1)(A), Internal Revenue Code, for this state during
1-46 the period on which the tax is based.

1-47 (b) A taxable entity may elect to compute the credit for
1-48 qualified research expenses incurred in this state in a manner
1-49 consistent with the alternative incremental credit described in
1-50 Section 41(c)(4), Internal Revenue Code, only if for the
1-51 corresponding federal tax period:

1-52 (1) a federal election was made to compute the federal
1-53 credit under Section 41(c)(4), Internal Revenue Code;

1-54 (2) the taxable entity was a member of a consolidated
1-55 group for which a federal election was made under Section 41(c)(4),
1-56 Internal Revenue Code; or

1-57 (3) the taxable entity did not claim the federal
1-58 credit under Section 41(a)(1), Internal Revenue Code.

1-59 (c) For purposes of the alternate credit computation method
1-60 in Subsection (b), the credit percentages applicable to qualified
1-61 research expenses described in Sections 41(c)(4)(A)(i), (ii), and
1-62 (iii), Internal Revenue Code, are 0.41 percent, 0.55 percent, and
1-63 0.69 percent, respectively.

1-64 (d) In computing the credit under this section, a taxable

2-1 entity may multiply by two the amount of any qualified research
 2-2 expenses and basic research payments made in a strategic investment
 2-3 area.

2-4 (e) The burden of establishing entitlement to and the value
 2-5 of the credit is on the taxable entity.

2-6 (f) For the purposes of this section, "gross receipts" as
 2-7 used in Section 41, Internal Revenue Code, means gross receipts as
 2-8 determined under Section 171.103.

2-9 Sec. 171.744. LIMITATIONS. The sum of the total credit
 2-10 claimed under this subchapter for a report, including the amount of
 2-11 any carryforward credit under Section 171.745, and the amount of
 2-12 unused credits accrued under Subchapter O before its repeal on
 2-13 January 1, 2008, and claimed on the report as authorized by Section
 2-14 18(d), Chapter 1 (H.B. 3), Acts of the 79th Legislature, 3rd Called
 2-15 Session, 2006, may not exceed 50 percent of the amount of franchise
 2-16 tax due for the report before any other applicable tax credits.

2-17 Sec. 171.745. CARRYFORWARD. If a taxable entity is
 2-18 eligible for a credit that exceeds the limitation under Section
 2-19 171.744, the taxable entity may carry the unused credit forward for
 2-20 not more than 20 consecutive reports. Credits, including credit
 2-21 carryforwards, are considered to be used in the following order:

2-22 (1) a credit carryforward of unused credits accrued
 2-23 under Subchapter O before its repeal on January 1, 2008, and claimed
 2-24 as authorized by Section 18(d), Chapter 1 (H.B. 3), Acts of the 79th
 2-25 Legislature, 3rd Called Session, 2006;

2-26 (2) a credit carryforward under this subchapter; and

2-27 (3) a current year credit.

2-28 Sec. 171.746. DETERMINATION OF STRATEGIC INVESTMENT AREAS.
 2-29 (a) Not later than September 1 each year, the comptroller shall
 2-30 determine areas that qualify as strategic investment areas using
 2-31 the most recently completed full calendar year data available on
 2-32 that date and, not later than October 1, shall publish a list and
 2-33 map of the designated areas.

2-34 (b) The designation is effective for the following calendar
 2-35 year for purposes of credits available under this subchapter.

2-36 Sec. 171.747. BIENNIAL REPORT BY COMPTROLLER. (a) Before
 2-37 the beginning of each regular session of the legislature, the
 2-38 comptroller shall submit to the governor, the lieutenant governor,
 2-39 and the speaker of the house of representatives a report that
 2-40 states:

2-41 (1) the total amount of expenses and payments incurred
 2-42 by taxable entities that claim a credit under this subchapter;

2-43 (2) the total amount of credits applied against the
 2-44 tax under this chapter and the amount of unused credits including:

2-45 (A) the total amount of franchise tax due by
 2-46 taxable entities claiming a credit under this subchapter before and
 2-47 after the application of the credit;

2-48 (B) the average percentage reduction in
 2-49 franchise tax due by taxable entities claiming a credit under this
 2-50 subchapter;

2-51 (C) the percentage of tax credits that were
 2-52 awarded to taxable entities with fewer than 100 employees; and

2-53 (D) the two-digit standard industrial
 2-54 classification of taxable entities claiming a credit under this
 2-55 subchapter;

2-56 (3) the geographical distribution of expenses and
 2-57 payments giving rise to a credit authorized by this subchapter;

2-58 (4) the effect of the credit provided by this
 2-59 subchapter on the amount of research and development performed in
 2-60 this state and employment in research and development in this
 2-61 state; and

2-62 (5) the effect of the credit provided under this
 2-63 subchapter on employment, capital investment, and personal income
 2-64 in this state and on state tax revenues.

2-65 (b) The final report issued prior to the expiration of this
 2-66 subchapter shall include historical information on the credit
 2-67 authorized under this subchapter.

2-68 (c) The comptroller may not include in the report
 2-69 information that is confidential by law.

3-1 (d) For purposes of this section, the comptroller may
 3-2 require a taxable entity that claims a credit under this subchapter
 3-3 to submit information, on a form provided by the comptroller, on the
 3-4 location of the taxable entity's research expenses and payments in
 3-5 this state and any other information necessary to complete the
 3-6 report required by this section.

3-7 Sec. 171.748. COMPTROLLER POWERS AND DUTIES. The
 3-8 comptroller shall adopt rules and forms necessary to implement this
 3-9 subchapter.

3-10 Sec. 171.749. ASSIGNMENT PROHIBITED. A taxable entity may
 3-11 not convey, assign, or transfer the credit allowed under this
 3-12 subchapter to another entity unless all of the assets of the taxable
 3-13 entity are conveyed, assigned, or transferred in the same
 3-14 transaction.

3-15 Sec. 171.750. EXPIRATION. (a) This subchapter expires
 3-16 December 31, 2013.

3-17 (b) The expiration of this subchapter does not affect the
 3-18 carryforward of a credit under Section 171.745 that was accrued
 3-19 before the date this subchapter expires.

3-20 SECTION 2. Subsection (a), Section 403.030, Government
 3-21 Code, as effective April 1, 2009, is amended to read as follows:

3-22 (a) For purposes of evaluating the effect on economic
 3-23 development in this state, the comptroller, before each regular
 3-24 session of the legislature, shall collect and make available
 3-25 information that:

3-26 (1) lists the strategies in the General Appropriations
 3-27 Act identified as meeting the statewide priority goal or service
 3-28 category of economic development, if any, of each state agency and
 3-29 institution of higher education, as defined by Section 61.003,
 3-30 Education Code, including:

3-31 (A) legislative appropriations or actual
 3-32 expenditures, as applicable, for each strategy;

3-33 (B) the method of financing of each strategy; and

3-34 (C) outcome measures associated with each
 3-35 appropriate strategy that are listed in the General Appropriations
 3-36 Act or the Automated Budget and Evaluation System of Texas (ABEST);

3-37 (2) lists all investments financed with money from the
 3-38 Texas growth fund created by Section 70, Article XVI, Texas
 3-39 Constitution;

3-40 (3) contains a summary of the information reported
 3-41 under Subchapter D, Chapter 502, Local Government Code, by each
 3-42 corporation created under Chapter 504 or 505, Local Government
 3-43 Code, and a copy of the report submitted by each of the 10
 3-44 corporations with the largest total revenue in the most recent
 3-45 fiscal year ending before the date the information compiled under
 3-46 this section is made available;

3-47 (4) contains a summary of the report required by
 3-48 Section 403.014 and information on the effect on revenues of
 3-49 ~~[allocation or]~~ apportionment under Section ~~[Sections]~~ 171.106
 3-50 ~~[and 171.1061]~~, Tax Code;

3-51 (5) contains a summary of reports the comptroller is
 3-52 required to submit by other law to evaluate the effectiveness of Tax
 3-53 Code provisions, including a report ~~[reports]~~ required by Section
 3-54 171.747 ~~[Sections 171.707, 171.727, 171.759, and 171.809]~~, Tax
 3-55 Code; and

3-56 (6) to the extent practicable, contains information on
 3-57 employment, capital investment, and personal income relating to:

3-58 (A) at least two tax provisions described by
 3-59 Section 403.014; and

3-60 (B) changes in school district property tax law
 3-61 or Tax Code provisions enacted by the most recent legislature.

3-62 SECTION 3. Subdivision (1), Subsection (a), Section
 3-63 228.153, Insurance Code, as effective April 1, 2009, is amended to
 3-64 read as follows:

3-65 (1) "Strategic investment area" means an area of this
 3-66 state that qualifies as a strategic investment area under
 3-67 Subchapter O-1 ~~[O]~~, Chapter 171, Tax Code, or, after the date that
 3-68 subchapter expires, an area that qualified as a strategic
 3-69 investment area under that subchapter immediately before that date.

4-1 SECTION 4. Subsection (a), Section 313.051, Tax Code, is
4-2 amended to read as follows:

4-3 (a) This subchapter applies only to a school district that
4-4 has territory in:

4-5 (1) a strategic investment area, as defined by Section
4-6 171.741 [~~171.721~~]; or

4-7 (2) a county:

4-8 (A) that has a population of less than 50,000;

4-9 (B) that is not partially or wholly located in a
4-10 metropolitan statistical area; and

4-11 (C) in which, from 1990 to 2000, according to the
4-12 federal decennial census, the population:

4-13 (i) remained the same;

4-14 (ii) decreased; or

4-15 (iii) increased, but at a rate of not more
4-16 than three percent per annum.

4-17 SECTION 5. (a) This Act applies only to a report
4-18 originally due on or after the effective date of this Act.

4-19 (b) The change in law made by this Act does not affect the
4-20 obligation for or the payment, computation, and collection of the
4-21 franchise tax for a report originally due before the effective date
4-22 of this Act. The obligation for and the payment, computation, and
4-23 collection of the franchise tax for a report originally due before
4-24 the effective date of this Act is governed by the law in effect on
4-25 the date the report was originally due and that law is continued in
4-26 effect for those purposes.

4-27 SECTION 6. This Act takes effect January 1, 2010.

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